

# Exhibit 38

Filed Under Seal

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

vs.

Case No. 3:10-cv-03561-WHA

GOOGLE, INC.,

Defendant.

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PURSUANT TO THE PROTECTIVE ORDER

VIDEO DEPOSITION OF GREGORY K. LEONARD, Ph.D.

San Francisco, California

Friday, March 11, 2016

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2241706

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1 conclusion?

2 A. An internal Google study that looked at  
3 this, and basically did an apportionment saying,  
4 okay, you know, when we are doing Android, you  
5 know, what to the extent of that is, you know,  
6 things that we're getting versus what we, you know,

7 [REDACTED]  
8 So it basically breaks things down  
9 between the revenues that Android generates and

10 [REDACTED]  
11 Google. But of course it is not using Android,  
12 it's just the search-and-ads technologies.

13 Q. You said it was an internal Google study?

14 A. Yes.

15 Q. And where is that reflected in your  
16 report, that study?

17 A. It's given here in the note, for  
18 instance. A Bates number for the study is  
19 indicated.

20 Q. So GOOG-00130338, that's the study?

21 A. Yes.

22 Q. And you said it's a comparison to

23 [REDACTED]  
24 A. Well, it's saying -- it's saying, when we  
25 earn some money on Android, how much of that is

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1 specific to Android versus, you know, basically

2 [REDACTED]  
3 allows you to break down the Android revenue  
4 between the part that's effectively due to Android  
5 itself versus the part that's just due to the  
6 search and ads technologies.

7 Q. [REDACTED]  
8 with it?

9 A. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 And the remainder that Google retains is a measure  
19 of the value of Android's search and advertising  
20 technologies. Because that's what they are  
21 [REDACTED]  
22 remainder.

23 So this document allows you to figure out  
24 that breakdown. And so I apply that to the search,  
25 and then, you know, the other items on here are

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1 hardware apps and digital content, I'm assuming are  
2 100 percent apportioned to -- to Android.

3 Q. Okay. But can you explain why the  
4 AdSense and display revenues are excluded?

5 A. Yes. Because Google doesn't make any  
6 [REDACTED]  
7 [REDACTED]  
8 are coming off of people's Websites, they are not  
9 coming off of a Google search.

10 So those reflect things that really  
11 the -- the value of it is really being generated by  
12 the -- in that case the ad technologies and, you  
13 know, the ad side of Google's business, and not by

14 [REDACTED]  
15 Q. And how do you know Google doesn't make

16 [REDACTED]  
17 A. The same document indicates that.

18 Q. The internal Google study.

19 A. Yes.

20 Q. [REDACTED]  
21 agreement?

22 A. Yes. Well, no, actually, no, I haven't

23 [REDACTED]  
24 Q. So you don't know what's in there.

25 A. I don't know what's in there.

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1 Q. And you don't know whether it  
2 characterizes these different buckets of revenue  
3 for purposes of revenue sharing.

4 A. [REDACTED]  
5 agreement says in that regard.

6 Q. So you don't know whether, for example,  
7 [REDACTED]  
8 that you are describing of search versus display  
9 and AdSense revenue.

10 A. What I do know is again what is in this  
11 Google document.

12 Q. Which you have assumed to be true.

13 MR. PURCELL: Object to the form.

14 THE DEPONENT: You know, it seems like it  
15 was done in the ordinary course of business so, you  
16 know, I find it to be a reasonable thing to rely  
17 upon.

18 Q. (By Ms. Hurst) Now, you have could have  
19 [REDACTED]  
20 to, right?

21 MR. PURCELL: Object to the form.

22 THE DEPONENT: I don't know. I might be  
23 mistaken, but I don't think it's been produced in  
24 this case.

25 Q. (By Ms. Hurst) Well, are you suggesting

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1 37 APIs. My problem is -- my understanding is, the  
2 37 APIs, at least it's not a problem. You can take  
3 those under GPLv2, and it's not going to affect any  
4 handset manufacturer.

5 Q. And where did you get that understanding?

6 A. Dr. Astrachan, and, you know, there's  
7 some legal stuff obviously in there which is,  
8 again, not my area, but that part I would rely upon  
9 counsel for.

10 Q. Okay. So you are just assuming that's  
11 true because counsel told you that?

12 MR. PURCELL: Object to the form.

13 Q. (By Ms. Hurst) That handset  
14 manufacturers could use the 37 Java APIs without  
15 modification, and risk no concerns under GPLv2.

16 MR. PURCELL: Object to the form.

17 THE DEPONENT: Well, I don't know, for  
18 the technical part of that, it may be  
19 Dr. Astrachan.

20 Q. (By Ms. Hurst) Let me ask you this: Was  
21 it a risky proposition for Google to try to launch  
22 a new mobile software platform back in the  
23 2005-to-2007 time frame?

24 MR. PURCELL: Object to the form.

25 THE DEPONENT: Well, by "risk," you mean

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1 were there upfront investments, and was it unclear  
2 whether they would be completely recovered. I  
3 mean, that's true of almost any business  
4 enterprise.

5 Q. (By Ms. Hurst) So in evaluating the risk  
6 that a choice is going to make for the platform,  
7 you would certainly want to evaluate that it might  
8 make a platform less attractive -- less attractive  
9 to OEMs, right?

10 MR. PURCELL: Object to the form.

11 THE DEPONENT: In general, if you were  
12 evaluating a choice, sure, that would be something  
13 you would -- you would think about, if you were  
14 doing a mobile platform and you weren't going to  
15 make the phone yourself.

16 Q. (By Ms. Hurst) And when Google was  
17 evaluating whether to launch Android, it was a risk  
18 because a software platform for mobile phones was a  
19 risk. There had been a lot of failure by a lot of  
20 people who you would think would be pretty good at  
21 that.

22 It was risky, it was a tough endeavor,  
23 true?

24 MR. PURCELL: Object to the form.

25 THE DEPONENT: I mean, as I said, you

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1 know, any -- almost any, you know, business going  
2 into a new area, you are going to have some -- some  
3 risk. I don't really think it was necessarily, at  
4 high level, any different than -- than other --  
5 other things. But sure, they didn't know how it  
6 would turn out. You know --

7 Q. (By Ms. Hurst) Was what I just said, the  
8 question that I asked you, was that true or  
9 false --

10 MR. PURCELL: Object to the form.

11 Q. (By Ms. Hurst) -- that it was a risk  
12 because a software platform for mobile phones was a  
13 risk, there had been a lot of failure by a lot of  
14 people who you would think would be pretty good at  
15 it, it was a tough endeavor, true or false?

16 MR. PURCELL: Object to the form.

17 THE DEPONENT: I mean, I might agree with  
18 parts of that more than other parts.

19 Q. (By Ms. Hurst) Would you agree with it  
20 more if you knew you had said it in the first  
21 instance?

22 A. Yeah. I mean -- or yes, again, I agree  
23 with it. In the sense it's risky, yes. It's --  
24 like other things, it's a tough endeavor. I can't  
25 remember the rest of it -- where other people have

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1 failed.

2 I mean, the key about that, though, is  
3 that Google took a very different approach, and  
4 they seemed to know about -- or they were centered  
5 on that from the very beginning, and so that makes  
6 it, I think, knowing that they had a different  
7 approach made them very different, but -- which is  
8 something else I'm sure I talked about there as  
9 well.

10 Q. Isn't it true that it was pretty risky  
11 and uncertain, and an unknown venture, that, you  
12 know, Google hadn't been in that business?

13 A. Well, yes, but they, you know, acquired  
14 the Android company, and Andy Rubin had been in the  
15 business. He had been involved in danger. So it's  
16 not like -- I mean he -- it wasn't at all because  
17 he was totally unfamiliar with it. But you know,  
18 again, it was his vision to do open source free,  
19 which I think was, you know, a crucial  
20 characteristic and, you know, was very important  
21 for the success.

22 Q. Isn't it true that the amount of money  
23 that Google paid for Android reflects a high level  
24 of uncertainty with respect to Android?

25 MR. PURCELL: Object to the form.

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1 THE DEPONENT: I mean, they paid some  
2 money up front, and then there were -- part of the  
3 payment was -- as I remember, was in meeting  
4 certain milestones. So that -- you know, that  
5 reflects again that there was some uncertainty, of  
6 course, as in all business -- most business  
7 situations where you are putting in a new business.  
8 And so, yeah, the way they paid for it is  
9 consistent with that.

10 Q. (By Ms. Hurst) Isn't it true that the  
11 amount of money that Google paid for Android, in  
12 your view, reflects the high level of uncertainty.

13 A. I don't know. I would need some more  
14 context for that. I mean, cause it's -- it's  
15 relative to what, so you -- you know, they paid  
16 money. Again, they broke up the payment, as often  
17 happens, to try to spread the risk around. That  
18 suggests there was risk, that's certainly true.

19 Q. Isn't it true that the amount of money  
20 that Google paid for Android, in your view,  
21 reflected the high level of uncertainty?

22 MR. PURCELL: Object to the form.

23 THE DEPONENT: I mean, again, as I just  
24 answered, at some level, yes.

25 Q. (By Ms. Hurst) And it isn't true that,

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1 in your view, it was pretty risky and uncertain,  
2 and an unknown venture, and that Google hadn't been  
3 in that business?

4 A. It is certainly true they hadn't been in  
5 the business although, again, Andy Rubin had been.  
6 And it's certainly unknown. You don't know how it  
7 is going to turn out.

8 So I mean certainly, I mean, so you -- I  
9 mean, all that's true, but it's -- you know, it's  
10 also not totally unique to the situation either.

11 Q. Have you made any study of platform  
12 economics in connection with this matter or  
13 otherwise?

14 MR. PURCELL: Object to the form.

15 THE DEPONENT: Yeah, I have a section in  
16 my report that discusses it.

17 Q. (By Ms. Hurst) Isn't it true that  
18 platform economics are characterized by what has  
19 sometimes been called the tippy nature, that is  
20 that one deal can make or break a platform?

21 A. I mean, I'll say a couple of things about  
22 that. One is that -- that's, you know, what kind  
23 of gets economists excited about platforms in  
24 general. But remember the reality is that, you  
25 know, there are lots of situations, as with

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1 anything else, where businesses fail, and some make  
2 it and some don't.

3 I think it's certainly true that platform  
4 businesses tend to be -- have fewer players just by  
5 the nature of it. But importantly in this case,  
6 you know that basic logic has been demonstrated by,  
7 in some academic papers to actually not really  
8 apply due to the nature of it. So it's been found  
9 that, you know, that tipping is actually relatively  
10 unlikely given the incentive developers and users  
11 have.

12 Q. What is the significance of the fact that  
13 Andy Rubin had prior experience with danger?

14 You said that several times now, what's  
15 that got to do with anything?

16 A. Well, it reduces the risk, right?

17 He's -- he's going to have some knowledge  
18 and understanding about the industry and what needs  
19 to be done. And he has some -- obviously some  
20 expertise in doing it, so that's going to reduce  
21 the risk relative to somebody who didn't have that  
22 background.

23 Q. What industry?

24 A. Cellular phone industry.

25 MS. HURST: Why don't we break for lunch now.

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1 THE DEPONENT: Okay.

2 THE VIDEOGRAPHER: This marks the end of  
3 Media No. 2 of the deposition of  
4 Dr. Gregory Leonard. We are going off the record  
5 at 12:41 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are back on the  
8 record at 1:37 p.m. This marks the beginning of  
9 Media No. 3 to the deposition of  
10 Dr. Gregory Leonard.

11 Q. (By Ms. Hurst) All right. Is it -- is  
12 it true, Dr. Leonard, that allowing OEMs to  
13 differentiate was a fundamental aspect of Google's  
14 strategy with Android?

15 MR. PURCELL: Object to the form.

16 THE DEPONENT: Yes, I think so.

17 MS. HURST: Exhibit 5146 is  
18 GOOGLE-01-00028498 and 499.

19 (Exhibit 5146 was marked for identification by  
20 the court reporter and is attached hereto.)

21 Q. (By Ms. Hurst) Okay. Exhibit 5146 is --  
22 reflects an email exchange between Andy Rubin and  
23 Bob Lee on or about August 11th and 12th, 2007; is  
24 that correct?

25 A. Yes.

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